

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

MAY 8 2014

OFFICE OF
MANAGING DIRECTOR

Raul Magallanes, Esq.
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Licensee/Applicant/Debtor: **Favorite
Communications, LLC**
Waiver Request: Late Payment Penalty
Disposition: Denied (47 U.S.C. § 159(c)(1); 47
C.F.R. §§ 1.1164(c), 1.1914)
Station: N/A
Fee: Fiscal Year (FY) 2012 Regulatory Fee and
Late Fees
Date Request Filed: Jul. 29, 2013
Date Regulatory Fees Paid: Not paid
Date Regulatory Late Penalties Paid: Not paid
Fee Control No.: RROG-12-00015303

Dear Counsel:

This responds to Licensee's *Request*¹ for a waiver of the penalties for late payment of Fiscal Year (FY) 2012 regulatory fees and for a separate installment plan. For the reasons stated below, we deny² the waiver; however, we acknowledge Licensee's request to pay the fee and accrued charges in installments, and in separate correspondence, we provide our decision.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty

¹ Letter from Raul Magallanes, Esq., The Law Office of Raul Magallanes, 3824 Cedar Springs Rd., 801-2859, Dallas, TX 75217 to FCC, Attn: Revenue and Receivables Operation Group, 445 12th Street, S.W., Room 1-A821, Washington, DC 20554 (Jul. 25, 2013) (*Request*).

² In this case, Licensee's request for an installment payment plan is sufficient to stay the effect of the Commission's red light sanction and our rule at 47 C.F.R. § 1.1164(e). See 47 C.F.R. § 1.1910.

³ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁵

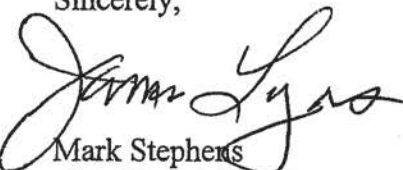
Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. § 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Since 2009, the Commission issued numerous orders and public notices explaining that it would no longer mail hardcopy invoices, and that licensees should check the Commission's website for the fee due and payment instructions.⁶

Our records show Licensee failed to pay the required FY 2012 regulatory fees when due,⁷ thus we assessed the penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717. Licensee fails to offer any explanation of the circumstances resulting in nonpayment of the fee in its *Request*, rather Licensee asserts it "does not have the funds to pay the penalty and therefore it is asking for a waiver."⁸

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. If the penalty it is to be waived, it is "only in the most extraordinary circumstances,"⁹ which Licensee did not establish by asserting it lacks funds.

We are providing a separate installment payment plan for Licensee. If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


Mark Stephens
FCR: Chief Financial Officer

⁴ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁵ 47 C.F.R. § 1.1164.

⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); *Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, Public Notice*, 24 FCC Rcd 11513, 11514 (2009); *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

⁷ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁸ *Request*.

⁹ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).